Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 3(n)	)	
and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of	)	
Mobile Services	)	

REPLY COMMENTS OF GTE

GTE SERVICE CORPORATION ON
BEHALF OF ITS TELEPHONE,
EQUIPMENT AND SERVICE
COMPANIES

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EXECUTIVE SUMMARY

The opening comments reflect a broad consensus regarding the Commission's proposals for defining private and commercial mobile services. Commenting parties generally agree with the proposed definitions of mobile services, public switched network, and "for profit" services. Similarly, there is widespread support for deeming all services with direct or indirect access to the PSTN to be "interconnected services." Parties also largely agree that the "public availability" prong of the CMS definition would be satisfied where providers serve broad classes of eligibles, but that exceptions should be recognized for specialized, limited access offerings.

There is virtually unanimous support for classifying ESMRs, PCPs, RCCs and cellular as CMS. Moreover, strong arguments have been made in the preponderance of comments that the same regulatory rights and obligations must apply to functionally similar CMS. Consistent with this regulatory parity goal, a sound public interest case has been made for insuring that existing service providers such as cellular enjoy the same flexibility to offer a variety of mobile services that the FCC has proposed for new PCS providers.

The record fully supports the maximum permissible forebearance from Title II regulation of CMS. Those few commenters offering contrary arguments are contradicted by the existence of an intensely competitive mobile marketplace which has previously been recognized by the Commission. Accordingly, requests to saddle CMS with tariffing, wholesale/retail price differentials and ONA-type restrictions should be rejected. Rather, complete forebearance from tariffing, TOCSIA and other Title II requirements is clearly warranted.

The record further establishes that there is no basis for imposing new regulatory restrictions on the mobile affiliates of dominant carriers. The Commission has previously considered and rejected such proposals as unnecessary and unwarranted

for independent telephone companies. For the same reasons, In-Flight's proposal to selectively impose full blown Title II obligations on the air-to-ground affiliates of its competitors should be summarily denied.

With respect to interconnection rights and obligations, virtually all commenters agree that the FCC should confirm that CMS enjoys the same interconnection rights afforded to cellular carriers, but should reserve judgement on the extent to which such rights should extend to interconnection between various forms of CMS. Moreover, equal access obligations are clearly unnecessary for competitive CMS offerings, which lack control over public network access and which cannot easily conform as a technical or marketing matter to such strictures.

Finally, the standards proposed by GTE and others that would place a heavy burden on states seeking to retain or initiate rate regulation of CMS providers would best serve the public interest. In contrast, the proposals of several state regulatory commissions to shift that burden back to mobile service providers would undermine the purpose of the Act. In addition, as pointed out by several commenters, the Commission should guard against "back door" attempts to assert state regulatory authority over CMS notwithstanding the exercise of Federal preemption authority.

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REPLY COMMENTS OF GTE SERVICE CORPORATION

GTE Service Corporation hereby submits its reply comments in the above-captioned proceeding concerning the regulatory treatment of mobile services.[1] As detailed below, the record before the Commission establishes the public interest benefits of policies that ensure regulatory parity for competing services while minimizing unnecessary Federal and state intrusions into the marketplace. The adoption of rules consistent with these principles will serve the public's interest in the delivery of diverse, competitive, and high quality mobile services.

I. THE INITIAL COMMENTS REFLECT BROAD CONSENSUS ON THE PROPOSALS FOR DEFINING THE BOUNDARY LINES BETWEEN PRIVATE AND COMMERCIAL MOBILE SERVICES

In its Notice of Proposed Rule Making, the Commission invited public comment on a series of definitional issues critical to drawing the boundary lines between private and commercial mobile services. In its opening comments, GTE offered specific views on each of the key definitional standards. While a total of seventy-seven different

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[1] Notice of Proposed Rule Making, GN Docket No. 93–252, (released Oct. 8, 1993) ("Notice").

parties participated in the initial round of this proceeding, there was notable agreement cutting across industry sectors with the basic approaches advocated by GTE.

Definition of Mobile Service. The Notice concludes that the definition of "mobile service" under the Communications Act has not been substantively modified by the Omnibus Budget Reconciliation Act of 1993. GTE and virtually all other parties concur in that assessment.

Service Provided for Profit. While there are inevitable gray areas in differentiating between non-profit and for-profit activities, there is broad agreement that the critical question is whether the service is offered to third parties for some form of compensation.[2] No one disputes that government, public safety and internal business uses of spectrum are not for-profit undertakings. Nor do many of the comments take issue with the propriety of allowing non-profit cost sharing groups to retain private mobile service status. Similarly, there is a strong consensus shared with GTE that the for-profit determination should look at whether the service as a whole is offered for profit to avoid gamesmanship in seeking to avoid CMS classification.[3]

Interconnected service. GTE suggested that the definition of interconnected service should include both direct and indirect access to the public switched telephone network. Somewhat surprisingly, this view was shared by almost all private carrier and common carrier industry participants. Organizations as diverse as AMTA, Telocator,

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[2] The major points of contention under the for-profit criterion are (1) whether the for-profit resale of excess capacity renders a particular provider "for-profit," and to what extent; and (2) the treatment of non-profit, cost-shared systems that employ a for-profit manager. Compare, e.g., Comments of The Bell Atlantic Cos. (Bell Atlantic) at 7 with Comments of Utilities Telecommunications Council (UTC) at 5–8.

[3] See, e.g., Comments of Arch Communications Group, Inc. at 4; Comments of Cellular Telecommunications Industry Ass'n (CTIA) at 7-8; Comments of GTE Service Corp. (GTE) at 5; Comments of Motorola at 7; Comments of NARUC at 13-15; Comments of NYNEX Corp. (NYNEX) at 5-6; Comments of Southwestern Bell at 5-6; Comments of Sprint at 5; Comments of Telephone and Data Systems, Inc. (TDS) at 3-4; Comments of Telocator at 8-9.

and CTIA all support this approach in place of past Commission precedent that excluded "store-and-forward" systems from interconnected service status.[4]

Public Switched Network. With a few exceptions, the other commenting parties join GTE in supporting the Commission's suggestion that "public switched network" under new Section 332 is interchangeable with traditional definitions of "public switched telephone network." The only discordant notes come from Sprint Corporation and NYNEX Corporation.

Sprint and NYNEX urge the Commission to adopt a new and expanded definition of public switched network that would include all wireless mobile services connected to the facilities of local exchange carriers.[5] However, the Commission, the Courts, and the Department of Justice have consistently recognized that cellular services are dependent upon, rather than substitutes for, public switched telephone services. For example, as NYNEX and the other RBOC's have pointed out:

> [T]he Court, the Department, and the FCC all have repeatedly recognized that [cellular radio] constitutes a separate market because its substantially higher price and limited capacity prevent it from being a substitute for local exchange or landline interexchange services. Even if the FCC were to approve and a BOC were to build a large regional — or even nationwide — cellular network, the same cost, capacity, and market factors would prevent the cellular service from being a substitute for landline interexchange service.[6]

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[4] See, e.g., Comments of American Mobile Telecommunications Ass'n, Inc. (AMTA) at 9; Comments of BellSouth at 5, 7-10; Comments of CTIA at 8-9; Comments of GTE at 5-6; Comments of NexTel Communications, Inc. (NexTel) at 10; Comments of Sprint at 5-6; Comments of United States Telephone Association (USTA) at 4-5; Comments of US West at 16.

[5] See Comments of Sprint at 7; Comments of NYNEX at 9.

[6] Memorandum of the Bell Companies in Support of Their Motion for Removal of Mobile and Other Wireless Services from the Scope of the Interexchange Restriction and Equal Access Requirement of Section II of the Decree, C.A. No. 82-0192 at 27 (Dec. 13, 1991) (quoting Response of the United States to Comments in Its Report and Recommendations Concerning the Line-of-Business Restrictions at 56 (Apr. 27, 1987)).

Neither Sprint nor NYNEX offers any meaningful explanation for fundamentally altering the definition of the nature of the network and its relationship to cellular services at this time.

Service Available to the Public or to Such Classes of Eligible Users as to be Effectively Available to the Public. GTE's position that current SMR and Private Carrier Paging eligibility limitations are so broad as to constitute public offerings drew support from both private and commercial mobile interests.[7] Similarly, there was strong general opposition to relying on system capacity as a key element in determining a service's public availability.[8] As a separate matter, several major companies supported GTE's suggestion that private status should be afforded to customized, restricted access services limited to discrete on-premises uses.[9] Accordingly, the Commission should move forward with rules based on these principles.

Private Mobile Service. Finally, the commenters broadly endorse the use of a "like services" test to determine functional equivalence under Section 332(d)(3) of the Communications Act.[10] In support of the use of the like services analysis, GTE reiterates its belief that customer perception, the linchpin of the test, is the appropriate indicator of functional equivalence. Use of the like services test will ensure that

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7 See, e.g., Comments of Motorola at 7; Comments of National Ass'n of Business & Educational Radio, Inc. (NABER) at 10; Comments of AMTA at 10; Comments of Arch Communications Group, Inc. at 8; Comments of CTIA at 15-16, 18-19.

8 See, e.g., Comments of NYNEX at 11; Comments of Pacific Bell and Nevada Bell at 8; Comments of Sprint at 8; Comments of Telocator at 11-12.

9 Comments of TDS at 8-9; Comments of UTC at 11.

10 See Comments of CTIA at 12-13; Comments of NexTel at 15-16; Comments of Southwestern Bell at 12-14; Comments of Telocator at 17-18; Comments of Motorola at 10; Comments of AMTA at 14; Comments of Industrial Telecommunications Ass'n, Inc. at 6; Comments of District of Columbia Public Ser. Comm'n at 7.

services that are perceived by the marketplace as substitutes are subjected to consistent regulatory treatment, thereby furthering the goal of regulatory parity.[11]

II. THE COMMENTS SUPPORT THE CLASSIFICATION OF EXISTING SERVICES IN A MANNER THAT SUBJECTS FUNCTIONALLY EQUIVALENT SERVICES TO LIKE REGULATORY TREATMENT

The comments offer broad-based support for classifying existing mobile services in a manner that groups together those services that the public views as substitutable.[12] To this end, virtually all commenters agree that Enhanced Specialized Mobile Radio Service (ESMR) services and cellular services should be classified as CMS.[13] Similarly, the comments support grouping Radio Common Carrier (RCC) and Private Carrier Paging (PCP) services as competing CMS offerings.[14] Such classifications are consistent with the strong case in the record for subjecting functionally equivalent services to the same rules and regulations.[15]

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[11] Comments of GTE at 10-11.

[12] Ram Mobile Data USA Limited Partnership appears to argue that regardless of whether a mobile service provider is "functionally equivalent" to a CMS, if that provider does not meet the literal definition of a CMS, it should be treated at private. Comments of Ram Mobile Data USA Limited Partnership at 6. GTE submits that this approach is antithetical to the goal of regulatory parity and is in stark contrast to the views of the majority of the commenters, and accordingly, should be rejected.

[13] See, e.g., Comments of Arch Communications Group, Inc. at 8; Comments of Bell Atlantic at 14-15; Comments of CTIA at 15-16, 18-19; Comments of District of Columbia Public Serv. Comm. at 8; Comments of Industrial Telecommunications Ass'n, Inc. at 5-6; Comments of Nextel at 15-16; Comments of Southwestern Bell at 15-17; Comments of Motorola at Appendix A; Comments of TDS at 13-15.

[14] See, e.g., Comments of Arch Communications Group, Inc. at 9; Comments of Bell Atlantic at 15-16; Comments of Century Cellunet, Inc. at 3-4; Comments of the District of Columbia Public Serv. Comm. at 8; Comments of GTE at 11; Comments of McCaw at 28-31; Comments of Motorola at Appendix A; Comments of Southwestern Bell at 17; Comments of TDS at 16.

[15] See, e.g., Comments of Arch Communications Group, Inc. at 6; Comments of Bell Atlantic at 13-14; Comments of BellSouth at 20; Comments of District of Columbia Public Service Commission at 7; Comments of McCaw at 19-22; Comments of Motorola

GTE supports the foregoing classifications of existing services because they will promote competition and ensure regulatory parity. Moreover, there is virtually no disagreement that these approaches are consistent with the goals that prompted Congress to adopt its most recent amendments to the Communications Act.

III. THE COMMENTS DEMONSTRATE THAT PCS AND OTHER MOBILE SERVICE PROVIDERS SHOULD ENJOY THE SAME REGULATORY FLEXIBILITY AND FACE THE SAME REGULATORY BURDENS

The primary objective of the Omnibus Budget Reconciliation Act of 1993 is to ensure that competing mobile service providers are subject to similar regulatory rights and obligations. The record in this proceeding and the Commission's past experience demonstrate that the differential regulation of similarly situated providers injures the public interest by undermining competition. As discussed below, there is therefore no reason for imposing differential regulation on the wireless affiliates of dominant carriers. In addition, GTE seeks to highlight its extremely serious concern that the Notice of Proposed Rule Making seemed to be drawing distinctions between cellular and new forms of personal communications services in ways that would create new regulatory disparities rather than ensure a level playing field. For that reason, GTE's comments emphatically underscored the importance of adhering to the overarching goal of comparable regulation for competing services.

The comments of other parties share GTE's concern and reflect general support for the establishment of a mechanism that affords PCS licensees the flexibility to offer both private and commercial mobile service, but only so long as existing mobile service

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at 9-11; Comments of NexTel at 12; Comments of Southwestern Bell at 12-14; Comments of Sprint at 9; Comments of TDS at 10-11; Comments of Telocator at 12-13; Comments of USTA at 6-7; Comments of UTC at 13-14.

providers such as cellular operators enjoy the same flexibility.[16] For example, McCaw and NYNEX are fully in accord with GTE's showing that extending self-designation flexibility to all competing mobile service providers with exclusive licensed spectrum will promote the efficient use of scarce spectrum, spur innovation, and provide incentives the impetus for the initiation of new services.[17] But, to constrain service flexibility rights to existing CMS providers, while affording broad rights to new CMS operators would be totally at odds with the very purposes of the legislation and this proceeding.

The comments also endorse GTE's recommendation for removing existing constraints on the use of cellular spectrum to facilitate an array of new service opportunities. First, there can be no serious question that the prohibition on use of common carrier spectrum to offer dispatch services has no purpose or public benefit in today's wireless marketplace. Customers can and should have choices in service providers unencumbered by artificial and anticompetitive constraints on cellular carriers. Second, with the transition to digital technologies, mobile systems are increasingly incorporating protocol conversion and data transmission capabilities into their services. There is no reason why outdated rules limiting use of Part 22 base stations should cast any cloud over the deployment and availability of such advanced capabilities. Third, the offering of ancillary fixed services can and should be liberally allowed consistent with ensuring adherence to the primary mobile service purpose of

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[16] See, e.g., Comments of Bell Atlantic at 16-17; Comments of BellSouth at 26-31; Comments of McCaw at 12-14; Comments at Motorola at 12; Comments of NYNEX at 17; Comments of PacTel Corp. at 16; Comments of Roamer One, Inc. at 14; Comments of TDS at 17.

[17] See Comments of McCaw at 12-14; see also Comments of NYNEX at 17-18; Comments of GTE at 14. Of course, the flexible use of spectrum, such as attempts to use cellular frequencies to provide air-to-ground services, would be limited by technical and other constraints.

the spectrum allocation. The record before the Commission provides a sound basis for action consistent with these principles.[18]

IV. THE RECORD SUPPORTS PROMPT AND FULL EXERCISE OF THE COMMISSION'S FORBEARANCE AUTHORITY

A. Mobile Services Should Receive Immediate Relief from Unnecessary Title II Regulatory Requirements

The comments provide almost unanimous support for the Commission's proposal to exercise fully its authority to forbear from Title II regulation of CMS providers.[19] There is broad endorsement of the Commission's tentative conclusion that the level of competition in the mobile services marketplace is sufficient to ensure that fair rates will be charged. Consequently, there clearly is no need for tariff regulation (Section 203) or related provisions addressing hearings on charges (Section 204), prescription of rates (Section 205), filing of contracts (Section 211), valuation of property (Section 213), authorization of construction (Section 214), transaction reports (Section 215), general reports (Section 219), and accounts and records (Section 220).

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[18] The Commission has a full record for the resolution of these issues and should act on them expeditiously either in this proceeding or in the context of the Part 22 rewrite.

[19] Notice ¶¶ 62-63. See, e.g., Comments of AMTA at 19; Comments of Arch Communications Group, Inc. at 10-11; Comments of Bell Atlantic at 21; Comments of BellSouth at 28; Comments of CTIA at 25; Comments of Century Cellunet, Inc. at 5; Comments of McCaw at 7-11; Comments of Motorola at 17; Comments of National Telephone Cooperative Ass'n at 5; Comments of New Par at 8-9; Comments of NYNEX at 18-20; Comments of Pacific Bell and Nevada Bell at 17; Comments of PN Cellular and Affiliates at 7; Comments of Rochester Telephone Corp. at 7; Comments of Rural Cellular Ass'n at 6; Comments of Southwestern Bell at 28; Comments of Telocator at 19; Comments of US West at 26; Comments of UTC at 18-19; Comments of Vanguard Cellular Systems, Inc. at 14; Comments of Waterway Communications System, Inc. at 8-15; Comments of GTE at 16-21.

In its opening comments, GTE explained that in view of the competitive nature of the mobile services marketplace, tariff regulation is wholly unnecessary for CMS providers.[20] As indicated above, the commenters agree that competition between service providers and different types of mobile services will guarantee fair rates.[21] In such circumstances, application of traditional tariffing requirements would undermine competition by forcing CMS operators to endure regulatory costs and delays along with divulging confidential cost and pricing data to their competitors.

The management and merger limitations contained in Sections 212, 218 and 221 are similarly unnecessary in a competitive marketplace. The same is true of the special provisions dealing with obscene or harassing phone calls (223), Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals (225), Restrictions on the Use of Telephone Equipment (227), and Regulation of Carrier Offering of Pay-Per-Call Services (228). Because of the absence of any relevant marketplace problems to correct, these provisions serve no purpose in the CMS context. In particular, Telephone Operator Consumer Services Improvement Act (TOCSIA) requirements under Section 226 would be wholly unjustified given the lack of any history of operator services abuses and the substantial costs and implementation difficulties they would cause CMS providers.[22]

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20 Comments of GTE at 16.

21 See, e.g., Comments of AMTA at 19-20; Comments of Arch Communications Group, Inc. at 11; Comments of Bell Atlantic at 21-27; Comments of BellSouth at 29; Comments of CTIA at 25; Comments of Century Cellunet, Inc. at 6; Comments of McCaw at 9; Comments of NYNEX at 19; Comments of Sprint at 12-13; Comments of Southwestern Bell at 28; Comments of US West at 27; Comments of Rochester Telephone Corp. at 7; Comments of Telocator at 19-21; Comments of Vanguard Cellular Systems, Inc. at 14.

22 Comments of GTE at 19; Comments of Bell Atlantic at 27; Comments of Motorola at 19.

B. Resellers and California PUC Challenges to Forbearance Should Be Summarily Rejected

Only two commenters, the People of the State of California and the California Public Utilities Commission (California PUC) and the National Cellular Resellers Association (NCRA), disagree with the characterization of the CMS marketplace as competitive, and thus urge the Commission not to forbear from tariff regulation.[23] In essence, the California PUC and the NCRA reassert repeatedly rejected arguments for onerous Federal and state regulation of mobile services. Indeed, their comments and characterization of the cellular marketplace reiterate positions and characterizations recently considered and dismissed in the FCC's cellular resale and CPE bundling proceedings.

Significantly, competition in the mobile services marketplace generally and in the cellular marketplace in particular, is well documented, which directly refutes the claims advanced by the California PUC and the NCRA. For example, in both its Notice of Proposed Rule Making and Report and Order in the Bundling of Cellular Customer Premise Equipment and Cellular Service proceeding,[24] the Commission explicitly stated that the cellular marketplace is subject to vigorous competition on both a facilities and a resale basis. Moreover, as indicated by numerous commenters in this rule making, the level of competition in the mobile services marketplace is such that no party has undue

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[23] Comments of The People of the State of California and the Public Utilities Commission of the State of California at 7-8; Comments of National Cellular Resellers Association at 13-16. The New York State Department of Public Service also urges the Commission to forbear from Title II regulation prematurely. Comments of New York State Department of Public Service at 10-11. Comcast and General Communications, Inc. favor the imposition of tariff regulation on LEC-affiliated CMS providers. Comments of Comcast at 12-15; Comments of General Communications, Inc. at 3.

[24] Notice of Proposed Rule Making, 6 FCC Rcd 1732, 1733 (1991), appeal dismissed, National Resellers Association v. FCC, No. 91-1269 (D.C. Cir. 1992); Report and Order, 7 FCC Rcd 4028, 4029 (1992).

or monopoly control, and the extent of competition among CMS providers will multiply exponentially as ESMRs, PCS and other providers enter the arena.[25] Under these well-established facts and circumstances, any objections to forbearance should be summarily dismissed.

C. There is no Basis For Imposing Any New or Special Regulatory Obligations Upon the Wireless Affiliates of Dominant Carriers

In the Notice, the Commission requested comment on whether to impose additional safeguard requirements on dominant carriers with CMS affiliates. Only a few commenters argue for such burdens,[26] and the record as a whole does not support such a result. Not only are additional regulations unnecessary, but they would serve to selectively burden an important sector of CMS providers in contravention of Congressional and Commission policy.

The Commission, of course, has previously examined the role of independent telephone companies in cellular services. In the Cellular Reconsideration Order,[27] the Commission expressly concluded that independent telephone companies should not be subject to special restrictions where the activities of their wireless affiliates are concerned. Specifically, the Commission found:

> We are not persuaded as a general matter that the benefits stemming from this requirement outweigh the costs to the independent telephone companies associated with the separate subsidiary requirement, including the costs of additional personnel and the possible dis-economies resulting from separate transmission facilities. Moreover, such costs may

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[25] See, e.g., Comments of Bell Atlantic at 21-26; Comments of BellSouth at 29; Comments of CTIA at 33; Comments of GTE at 14-15; Comments of Motorola at 17-18; Comments of NYNEX at 19-20; Comments of Pacific Bell and Nevada Bell at 17; Vanguard Cellular Systems, Inc. at 14.

[26] See, e.g., Comments of Bell Atlantic at 30-35; Comments of Comcast Corp. at 12-15.

[27] 89 F.C.C. 2d 58, 78-80, further recon., 90 F.C.C. 2d 571 (1982), appeal dismissed sub nom., United States v. FCC, No. 82-1526 (D.C. Cir. Mar. 3, 1983).

be prohibitive for some companies, thus reducing the number of potential competitors... .[28]

The Commission's analysis has proven to be correct. There has been no evidence of any such abuse over the past ten years. The suggestion that some special restrictions should be imposed on such carriers now is, therefore, contrary to experience and well-founded existing Commission precedent.

Similarly, the Commission should reject In-Flight's self-serving suggestion that the air-to-ground affiliates of dominant carriers be subjected to additional regulations governing the competitive communications services provided by such carriers.[29] In-Flight's proposal is nothing more than a blatant effort to misuse Commission processes for anticompetitive purposes. Burdening dominant carriers' affiliates with unnecessary regulations of this nature would serve no useful purpose. This clearly would frustrate the goal of creating an equitable regulatory framework and undermine competition in the marketplace to the detriment of consumers.

V. MOBILE INTERCONNECTION RIGHTS AND OBLIGATIONS

In its opening comments, GTE agreed with the Commission that CMS providers should enjoy the same range of interconnection rights afforded to Part 22 licensees and that private carriers have access to interconnection necessary for the conduct of their businesses. GTE also urged the Commission to reserve judgment on whether CMS providers should be required to interconnect with other CMS providers, and to reject requests for imposition of equal access obligations on CMS.

CMS Interconnection. Virtually all commenters concur that CMS providers should have the same interconnection rights afforded to cellular carriers. These

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28 89 F.C.C. 2d at 78.

29 Comments of In-Flight Phone Corporation at 4.

commenters, like GTE, point out that such co-carrier rights permit interconnection in a manner that is reasonable for both parties and ensure mutual good-faith negotiations.[30]

Private Service and CMS to CMS Interconnection. The record does not support Commission intervention with respect to either private service or CMS-to-CMS interconnection rights. Given the large number and diversity of private mobile systems, expanding their interconnection rights at this time would be unnecessary and premature.[31] The better course is to defer judgment to allow for marketplace forces to first take effect.[32]

CMS Equal Access Obligations. The record confirms that imposing equal access requirements on cellular and other CMS services would ignore the underlying purpose of such obligations. All CMS services, including cellular, are competitive offerings, and CMS providers do not control access to the public switched telephone network. Consequently, there is no historical, economic, or policy basis for extending equal access to CMS services. In addition, equal access is simply ill-suited to the technical and economic realities of the mobile service marketplace. It would diminish network efficiency, negate substantial investments in wide-area systems, disturb customer expectations, and needlessly increase the costs of doing business.[33]

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30 See, e.g., Comments of Century Cellunet, Inc. at 7; Comments of MCI at 7; Comments of Motorola at 20-21; Comments of US West at 32; Comments of Vanguard Cellular Systems, Inc. at 16; Comments of Pacific Bell and Nevada Bell at 18.

31 See Comments of GTE at 22.

32 Id.

33 See id. at 22-23.

VI. THE STANDARDS PROPOSED BY GTE AND OTHER COMMENTERS CONCERNING STATE PETITIONS FOR REGULATION WILL BEST SERVE THE PURPOSES OF THE BUDGET ACT AND THE PUBLIC INTEREST

In their comments, GTE and several other commenters urge the Commission to establish a strong presumption against the imposition or continuation of state regulation in those markets served by multiple CMS providers.[34] GTE submits that in such circumstances, requiring states to bear a heavy burden of proof will promote Congress's intent that states not be permitted to regulate CMS providers in robustly competitive markets.[35] This approach would be consistent with the well documented competitiveness of the wireless marketplace and the Congressional objective of eliminating unnecessary state regulation.

In such respects, GTE agrees with those commenters that urge the Commission to guard against "back door" attempts of state regulatory commissions to assert authority over rates and entry of CMS operators under the guise of regulating "other terms and conditions" of CMS.[36] In particular, GTE urges the Commission to scrutinize all state regulations affecting "other terms and conditions" and to establish a procedure for evaluating the actual market impact of any such requirements. At a minimum, the Commission should be receptive to mobile service providers' complaints that state regulation is inhibiting their ability to compete freely in the public interest.

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[34] See, e.g., Comments of GTE at 24; Comments of Bell Atlantic at 41-43; Comments of CTIA at 37-38; Comments of Century Cellunet, Inc. at 8; Comments of McCaw at 24-27; Comments of Motorola at 20; Comments of NABER at 17; Rochester Telephone Corporation at 9; Comments of Rural Cellular Association at 7; Comments of Telocator at 25.

[35] H.R. Rep. No. 102-213, 103rd Cong., 1st Sess. 493, reprinted in 1993 U.S.C.C.A.N. 1882. See also Comments of GTE at 25.

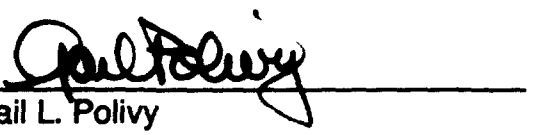
[36] Comments of McCaw at 27.

VII. CONCLUSION

The record strongly supports the establishment of a comprehensive regulatory regime for mobile services that will ensure regulatory parity for competing mobile services providers free from unnecessary Federal and state burdens. Accordingly, GTE urges the Commission to promulgate rules consistent with the foregoing to permit the public to enjoy the greatest possible benefits from the competitive delivery of mobile services.

Respectfully submitted,

GTE Service Corporation on behalf of
telephone, equipment and service
companies



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Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Reply Comments of GTE" have been mailed by first class United States mail, postage prepaid, on the 23rd day of November, 1993 to all parties of record.

Ann D. Berkowitz